



September 9, 1999

Ms. Sara Hartin  
City Attorney  
City of Copperas Cove  
P.O. Drawer 1449  
Copperas Cove, Texas 76522

OR99-2506

Dear Ms. Hartin:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127136.

The City of Copperas Cove (the "city") received a request for information pertaining to two insurance claims filed by the city in connection with two unrelated automobile accidents. You inform this office that the city did not file a claim for the accident involving a garbage truck and, therefore, no responsive documents exist with regard to that accident. You state that the city has released certain records pertaining to the other accident, with redactions. You contend, however, that one inter-office memorandum is excepted from required public disclosure pursuant to sections 552.102, 552.108, and 552.111 of the Government Code. We will discuss each of the exceptions you raised in turn.

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . ." Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a

reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Employee privacy under section 552.102(a) is less broad than common-law privacy under section 552.101, however, because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977). This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." None of the information contained in the memorandum comports with this standard. The city may not withhold any of the information at issue pursuant to section 552.102(a).

Section 552.108(b)(2) excepts from public disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution," but only where "an investigation . . . did not result in conviction or deferred adjudication." You contend that section 552.108(b)(2) is applicable because the memorandum concerns a police internal affairs investigation that did not result in a conviction or deferred adjudication. We note, however, that internal affairs investigations are generally administrative, as opposed to criminal, in nature. Unless the internal affairs investigation results in a criminal investigation, we do not believe that section 552.108(b)(2) was intended to protect records pertaining to such an investigation. See *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable where no criminal investigation resulted). You have not argued that the records at issue pertain to a criminal investigation. Consequently, the city may not withhold the memorandum pursuant to section 552.108(b)(2).

Section 552.111 of the Government Code protects from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the policymaking process. Open Records Decision No. 615 at 5 (1993); see also *Austin v. City of San Antonio*, 630 S.W.2d 391 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). Section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 5 (1993). The memorandum consists of purely factual material, none of which is protected from public disclosure under section 552.111.

Because you have not raised an applicable exception to required public disclosure, the city must release the memorandum in its entirety. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be

relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/nc

Ref: ID# 127136

Encl. Submitted documents

cc: Mr. Frank Dimuccio, Jr.  
2314 E. Highway 190  
Copperas Cove, Texas 76522  
(w/o enclosures)